IN THE LABOUR COURT AT HUBLI

Application I.D. (LCH) Claim No. 65/1967

Presiding Officer : Sri D. Ponnurangam, B.A., B.L.

Dated 28th November 1968.

Claimant :

Sri Narayan Rao Gudi T.M. Roll No. 43, Painter, Agalkera, *via* Munirabad, District Raichur.

Vs.

Respondent :

The Superintending Engineer, Tungabhadra Project Circle, Munirabad.

The claimant abovenamed has filed an application under Section 33 C(2) of the Industrial Disputes Act, 1947, which I may hereinafter, refer to as the I.D. Act for the sake of convenience, against the Superintending Engineer, Tungabhadra Project Circle, Munirabad, claming amounts due to him from the respondent as per the annexures annexed to his claim application. His ground is that he was a workman of the respondent bearing Roll No. 43 in the grade of Work Inspector Grade 1 and that therefore, he is entitled to receive from the respondent the benfits detailed in the abstract of statements mentioned in the annexures mentioned above. There are 10 annexures filed along with his claim application.

2. The respondent has filed his statement of objection, alleging that the claims of the applicant is false, and it is not maintainable. The respondent denyes the allegations of the claimant as claimed by him in the annexures and generally put the claimant to strick proof of the same. The respondent has also stated that the applicant is not entitled to claims as he had been appointed temporarily from the very beginning of his services, and that therefore, his services cannot be considered to be of continuous service, that therefore, there are interruntions in his service in as much as each appointment of his was a fresh appointment, that the applicant belonged to a service of work charged establishment and therefore, he was not entitled to any increments as per the erstwhile Hyderabad State (P.W.D.) as per the Circular of P.W.D. dated 13th May 1954. He has also stated that from 11th February 1965 the claimant was permitted

to retire and that, thereafter he was re-employed for one year from—12th March 1965 to 11th March 1966, and that as it was a fresh service from 12th March 1965, he was not entitled to Earned Leave and he had proceeded on leave for six months during the period from 9th August 1965 to 8th February 1966, and that therefore, he is not entitled to leave salary. It is further stated that the provisions of the I.D. Act are not applicable to this case as there is no dispute as contemplated by this Act. In short, it is prayed for the dismissal of the claimant's application.

3. In support of the claims of the claimant, the claimant Sri Narayan Rao Gudi examined himself as W.W. 1 and three others, Sheshadri, Arul Das and Arokyaswamy respectively as W.W. 1, W.W. 2, W.W. 3 and W.W. 4 on his behalf. Documents Exhibits W-1 to W-5 were exhibited and marked for the applicant. By consent of both the sides 13 documents Exhibits M-1 to M-13 were exhibited and marked. One witness on behalf of the management was examined and then it closed its case. Arguments were heard at length and I have perused the records. List of exhibits marked in the case are separately available in the records.

4. The applicant has mainly made the following claims from the management, *viz.*, a sum of Rs. 3,698.90 as per Annexure 1 marked Exhibit W-3, the said amount being the alleged periodical increase from 1st July 1954 to 11th June 1966, (2) a sum of Rs. 3,247.35, as per Annexure 2, the said amount being the alleged reduced—salary from 10th June 1956 to 11th March 1966, (3) a sum of Rs. 7,734.40 as per the Annexure 3, to the claim petition, and in which the aforesaid two items have been included along with the other two items, (4) he also claims wages for the leave period he had taken.

5. In the evidence of the applicant, he has deposed that he was appointed as a temporary maistry as per the letter of appointment dated 2nd November 1950 marked Exhibit M-1, that he was not given the duration for which he should work and that he was thereafter, promoted as First Grade Temporary Maistry as per Exhibit M-2, dated 27th June 1951, on a fixed scale of salary; and that he continued as the First Grade Temporary Maistry right upto 1966. He has also deposed that in the year 1952, he was given an increment of Rs. 5 p.m. with effect from 1954 and that he was given such increments upto 1954, and that from 1955 he is entitled to the increments, and the management had not given for that period, and therefore, he claims periodical increase Rs. 5 p.m. from the beginning of June 1955 to 1st March 1966. The evidence of the claimant to this effect remains unchallenged in the records as there is no cross-examination on that point denying the liability of the management to pay the increments.

6. The main contentions made by Sri P. R. Javali, the learned Assistant Government Pleader, were that the claimant was appointed for the first time on 2nd October 1950; that thereafter he was promoted with effect from 1st June 1951 to the First Grade Temporary Maistry, and his pay was fixed at Rs. 90 in the grade of Rs. 90-5/1-150; that the above grade annual increments were granted for three years, *viz.*, on 1952, 1953 and 1954 raising his pay from Rs. 90 to Rs. 105; that such an increment was paid upto 1956; that on 9th June 1956, the claimant's services were terminated; that thereafter he was reappointed from 10th June 1956, that on 11th February 1962 the service of the claimant were terminated and he was re-appointed, and therefore, the claimant cannot claim periodical increments, as his service was all along temporary, and that therefore, such a service cannot be considered continuous in as much as each appointment of his was a fresh appointment and that he has been treated as a fresh employee.

7. It was further contended on behalf of the management that the claimant's claim for two years' increment has not been proved, and that it is admitted by this claimant that his claim for increment for two years rejected by the erstwhile Hyderabad Government during which tenure of office, he was appointed and that against the order of rejection of the Hyderabad Government, the claimant had not taken any steps to recover the two years arrears of increments, and that after the Reorganisation of States, the claimant cannot make that claim to the State of Mysore, which is the successor Government.

8. The letter of appointment of the claimant, Exhibit M-1 dated 2nd November 1950 shows that he was appointed temporarily on Rs. 60 plus the usual allowance chargeable to 5 per cent contingencies of Canal Construction Division, Munirabad. In Exhibit M-2 dated 27th June 1957, the Superintending Engineer has stated as follows (only relevant portion given):

> "As recommended by the Executive Engineer, Canal, Construction Division, No. 1, Tungabhadra Project, Munirabad, Mr.Narayana Rao Gudi, Second Grade T.M. drawing Rs. 60 *plus* Rs. 28 dearness allowance p.m. is promoted to Frist Garde as a special case and salary fixed at Rs. 90 in the grade of Rs. 90-5-1-150, promotion to take effect from 1st June 1961. Mr. Narayan will claim Rs. 90+28 D.A. P.M. from the date."

9. From the records it is seen that the claimant's services were terminated with effect from 9th June 1956 for the first time and he was again reappointed from 10th June 1956 (Exhibit M-4). His

services were again terminated by a letter dated 1st March 1957, terminating his services with effect from 31st March 1957 (Exhibit M-5) and he has been reappointed again from 4th April 1957 as per Exhibit M-7; his services have been again terminated from 31st March 1958 as per Exhibit M-8 and he was reappointed with effect from 3rd April 1958 stating that the opponent was purely temporary and terminable on month's notice on either side. It is also evidenced from the records that from 3rd April 1958, the claimant has continued in service upto 11th February 1965, *i.e.*, till the attained the age of superannuation. These facts are not at all disputed by both the sides.

10. From the letters of appointment and termination in respect of this claimant, no satisfactory reasoning was shown why the services of this claimant were terminated, and that he was again reappointed for the same Division. The management, even at the time of evidence and arguments, is not in a position to explain the reason for the frequent terminations and alleged reappointments. It appears from the records that the claimant was employed as workcharged employee under the respondent, the pay of such an employee is charged direct to the works and the duration of employment is qua terminus with the project or work for the execution of which such an employee is employed.

11. The nature of work of the work charged employees, however, continues till the completion of the project in case of major projects, like the Tungabhadra Project, in question and for such a major project, it may take several long years before the same is completed and the Tungabhadra Project is still not stated to be completed. The claimant was entertained in the service of the erstwhile Hyderabad Government in the year 1950 as a Second Grade Temporary Maistry and he was admittedly given increments even according to the admission of the respondent upto 9th June 1956. (Refer para 4 of the Objection Statement of the respondent). There is absolutely no record to show and it is not the case of the management that the Tungabhadra Project has been completed. In other words, till the completion of the Tungabhadra Project, the work on that project is essentially a continuous process.

12. The service of this claimant was first terminated in 1950 (Exhibit M-3) and as I have already observed, no convincing reason is given why his services were terminated. The reason given in Exhibit M-3 appears to be artificial. The Divisional Engineer, P.W.D., Canal Construction Division, Tungabhadra Project, Munirabad has given the following reasons for the termination of the services of the claimant (along with other employees) as per Exhibit M-3,

dated 8th May 1956 wherein it is stated as follows (only relevant portion given) :—

> "Due to the completion of work of this division, the services of the following work charged establishment are not required with effect from 10th June 1956 (fore noon). They are hereby given one month's notice to count from 10th May 1956 to 9th June 1956."

In that list given in Exhibit M-3 the name of the claimant is found in Serial No. 1. Exhibit M-4, dated 15th June 1956 is the letter of reappointment of the claimant. This letter is from the office of the same division mentioned above. The relevant portion of that letter reads as hereunder :—

> "Mr. Narayan Rao is appointed as a T.M. as O.S. Rs. 90-4-28 with effect from 10th June 1956 (fore noon) chargeable to maintainance estimate of main canal for the year 1956-57 and posted to work under Mr. R. Medekar, Supervisor, Roll No. 1554. The appointment is purely temporary and terminable without notice."

It is seen from the aforesaid 2 letters that the services of the claimant was terminated from the fore noon of 10th June 1956 (Exhibit M-3) and he has been again stated to have been re-appointed from the fore noon of the same day as per Exhibit M-4 though the two dates in Exhibits M-3 and M-4 are different. A careful reading of Exhibit M-3 and M-4 will show that the termination of services mentioned in Exhibit M-3 and the alleged appointment mentioned in Exhibit M-4 are almost contemporneous, nay, it is simultaneous. In other words, in the eye of law there is a continuity of service and the alleged termination of services of the claimant and the so-called re-appointment is in my opinion, appears to be an artificial break in the service of the claimant, which has been tried to be set up by the management. The other letters of termination will clearly indicate that there is an artificial break imposed by the said management. No reason is forthcoming why the claimant whose services had been terminated has been again appointed almost immediately after the alleged termination of the services.

13. On a perusal of the records, it appears to me that the artificial breaks in the service of the claimant were resorted to by the management in order to avoid granting of the legitimate benefits to which a work charged employee is entitled. The records also show that there is an award of the Industrial Court, Hyderabad, which has definitely ordered that such an employee, who has put

in continuous service of one and a half year should be made permanent. A perusal of Exhibit W-2 (adjudication in I.D. No. 10 of 1964 on the file of the Industrial Tribunal in Mysore, Bangalore, between the workmen and the Superintending Engineer, Tungabhadra Reservoir Circle, Munirabad *Vs.* The management, the erstwhile Government of Hyderabad) shows that the Government has decided that the temporary and daily waged employees of the P.W.D. who have in 1½ years of continuous service should be absorbed in permanent posts as and when vacancies arise, without making the posts themselves permanent. In the present case, there were vacancies and in these vacancies, the claimant was appointed from time to time. Though an artificial breakage has been made by the management, in the eye of law there is no breakage as such, the service shall be deemed to be continuous within the meaning of Section 25-B of the Industrial Disputes Act, as the statutory conditions provided under that section has been clearly satisfied by the claimant. Admittedly, the Tungabhadra Project is undertaken by the public-sector and not by the private sector. If the Private Sector were to follow such a practice as artificial break made in this case, it would be termed unfair labour practice. This is a very clear case where even in the public sector unfair labour practice has been employed to avoid legitimate payments to the workers in violation of the principles of natural justice. For the fore-going reasons, I am unable to accept the contention of the management that there was no continuity of service in the tenure of service of the claimant. I hold that point in favour of the claimant.

14. The next point for consideration is whether the applicant is entitled to the periodical increments as prayed for by him in Annexure No. 1, marked Exhibit W-3.

15. The applicant has deposed that he is entitled to get the periodical increments at Rs. 5 from the beginning of June 1955 to 11th March 1966. The management states that increments have been paid to the applicant upto 9th June 1956 (refer para 4 of the Objection Statement of the management). But there is no evidence to show that increment was paid to him upto June 1956. The applicant has sworn in his evidence that he was given increments at Rs. 5 upto 1954. There is no cross-examination on that point. Further, in the letter marked Exhibit M-5, dated 24th July 1966, the management has stated that in partial modification of the office order No. C/24. dated 15th July 1956 (which is marked Exhibit M-4), the salary of the applicant was fixed at O.S. Rs. 60+28 from 1st July 1956 as per revised scale. But the salary of the applicant has been fixed as per Exhibit M-2 and that salary is Rs. 90 in the grade of Rs. 90–5–1–150, and that salary has been implemented admittedly upto June 1956. That sudden unilateral

reduction of salary reducing the salary to Rs. 60 made by the management, in my opinion, is a material change in the conditions of service of the applicant without complying with the mandatory statutory provisions provided under section 9-A of the Industrial Disputes Act, 1947 and I hold therefore, such a change in the pay of the applicant will not bind the claimant, as I have already held the services of the applicant is continuous.

16. In Exhibit W-3, the statement of periodical increments furnished by the applicant in this case, he claims such increments from 1st July 1954 to 1st June 1966. But there is satisfactory material to show that the applicant reached the age of superannuation on 11th February 1965. That date is not disputed at all by the applicant. Hence, from 1st July 1954, the applicant is entitled to periodical increments only upto 11th February 1965 and therefore, I hold that the applicant is entitled to get from the management, the periodical increments from 1st July 1954 only upto 11th February 1965 though claimed by the applicant in the annexure Exhibit W-3, upto June 1966, the correctness of which is not at all challenged by the management. I further hold the applicant is not entitled to periodical increment beyond the date of his superannuation (11th February 1965).

17. The next claim of the applicant is reduced salary claim as demanded by him as per his Annexure 2 to the claim application, wherein he makes a claim of Rs. 3,247.35. Under Exhibit M-5, dated 24th July 1956 the management has reduced the salary of the applicant from Rs. 90 to Rs. 60. The reduction so made by the management is unilateral having made at the back of the applicant. affecting the rights and without giving him an opportunity. Such an order is against the very principles of natural justice in as much as no reason at all has been given for the sudden reduction in Exhibit W-5. Such a change, as I have already mentioned is a vital change in the service conditions, materially affecting the interest of the applicant. Such an order of reduction is not binding upon the applicant and hence, I hold that the applicant is entitled in law to have his claim regarding reduction of his salary from 1st June 1956 to 11th February 1965, the date on which he attained the age of superannuation. The claim of the applicant in that regard has made in Annexure 2 mentioned above is allowed in part only for the period upto 11th February 1965 and as per the details shown in that Annexure 2.

18. The applicant also makes another 4 types of claims in Annexure 3. I do not propose to give a finding regarding the items No. 1 and 2 mentioned therein as an answer to these items are already covered by the findings given above. Regarding the

re-appointment of the applicant for one year after his age of superannuation the management has stated in para 6 of the objection statement as follows:—

> "The applicant was permitted to retire from service from 11th February 1965...., as he attained the age of superanuation. After this he was re-employed for one year from 12th March 1965 to 11th March 1966 by O.O. No. EST/5/53/64-65, dated 2nd March 1965 in which period he proceeded on leave for six months from 9th August 1965 to 8th February 1966. As it was a fresh service from 12th March 1965, there was no earned leave accumulated to the credit of the applicant, when he proceeded on leave from 9th August 1965. Hence the applicant is not entitled to the salary for leave period as claimed by him item No. 3 of Annexure 3."

19. There appears to be considerable force in the objection of the management regarding the claim for the leave period. In the evidence of the applicant he asserts that he is entitled to salary for the leave period from 9th August 1965 to 8th February 1966 and he relies upon the award as per Exhibit W-2 which is in respect of I.D. No. 10/1964 on the file of the Industrial Tribunal in Mysore, Bangalore. I am unable to accept the claim of the applicant for the leave period. My reasons for the same are as hereunder:—

20. Firstly, it is admitted by the claimant that he had reached the age of superannuation on 11th February 1965. There is satisfactory material on records to show that he was permitted to retire after reaching the age of superannuation. It is also not disputed by the management that he was reappointed by it from 12th March 1965 to 11th March 1966 and this admission is borne by the service register Exhibit M-13 at page 11. (refer also para 4 of the objection statement).

21. Once the applicant reached the age of superannuation and he was permitted to retire from the service, in the eye of law, the initial contract of service entered into between the management and the applicant, whether express or implied came to an end by the operation of law. Further, after the age of superannuation as in the present case, there cannot be continuity in his service with the respondent. Therefore,. there was determination of the initial contract between the parties. Even if it is held to be a continuation of service, there is a breach in the performance of that contract by the impossibility of performance of contract because of his reaching superannuation. Therefore, there is an end of the initial contract. I admit there was a period of service after the age of superannuation

from 12th March 1965 to 11th March 1966 and that, in my opinion, will give rise to a fresh contract of service, between the parties, giving rise to what is called in law 'Novatio'. The applicant cannot claim, during that period of one year's fresh contract of service, the initial benefits enjoyed on him such as the casual leave, the privilege leave, sick leave and the like.

22. There is convincing material to show that from 9th August 1965 to 8th February 1966, the applicant did not report to duty on the ground of alleged sickness. There is no medical certificate to show that he was so sick. Even assuming he was sick, he cannot claim the leave benefit for the reasons narrated above as it is a new contract of service. That is particularly so, in view of the fact, the management had not granted him leave as could be seen from the letter Exhibit W-5, dated 31st August 1965 addressed by the management to the applicant. The relevant portion of that letter states as follows: that letter relates to the privilege leave for 30 days. It reads thus :—

> "You may avail the leave on loss pay and allowances, pending entitlement to the leave. Further, you have proceeded on five days casual leave from 9th August 1965 and extended by 30 days, without intimation in advance. You have also availed leave on loss of pay which curtails the Government work entrusted to you.
>
> You should return to duty with the medical certificate of fitness as you have stated in your application that you wanted to undergo treatment for piles."

23. There is no evidence on record to show satisfactorily that the applicant was granted leave by the management. He cannot claim sick leave and other privilege leaves when he was not granted the leave. Therefore, I hold that he is not entitled to claim the leave salary as demanded by him in item No. 3 of Annexure 8 mentioned above. I further hold that he is neither entitled to the full pay, nor is he entitled to half pay in that regard. I disallow his claim so far as the leave period is concerned.

24. He claims that he was working for the period from 12th February 1965 to 11th March 1965. There is evidence to show that he had not reported to duty on the ground of sickness from 9th August 1965, upto 8th February 1966. There is no evidence to show that he joined duty after 8th February 1965. Therefore, I cannot give any benefit to him for the period 8th February 1966 to 11th March 1966.

25. In item No. 4 of Annexure 3, the applicant claims salary for working period from 12th February 1965 to 11th March 1965. That is the period from the date immediately after his reaching the date of superannuation till he was reappointed by the management from 12th March 1965. There is no satisfactory evidence that he worked during that period. Therefore, I reject this claim. So, I hold that he entitled to the salary for the working period from 12th March 1965 to 8th August 1965 at the rate mentioned in Exhibit M-11, viz., Rs. 85+45 D.A.

ORDER

26. For the foregoing reasons, I allow the claims of the applicant only in part and reject his claims in terms of my findings mentioned above. I hold that the applicant is entitled to receive the sum of money detailed in the Schedules annexed to this Order and the same shall form part of this Order. I further direct that the management should pay the amount specified in the Schedule annexed to this Order within one month from this date.

27. I further direct the office of this Court to submit the true copy of this Order to the Secretary to Government of Mysore, Food, Civil Supplies and Labour Department, Mysore Government Secretariat, Vidhana Soudha, Bangalore-1, as required under Section 33 C(4) of the Industrial Disputes Act.

Dictated to the Stenographer, transcribed and typed by him, and then pronounced by me in Open Court, this 28th day of November, 1968 at Hubli.

D. PONNURANGAM,

Presiding Officer,
Labour Court, Hubli.

28-11-1968.

SCHEDULE

Sl. No.	*Particular*	*Amount in Indian Currency* Rs. Ps.
1.	The periodical increments, which the claimant is entitled from the respondent from 1st July 1954 to 11th February 1965 (the age of superannuation).	3,083-18
2.	The reduced salary, which the claimant is entitled to receive from the respondent from 1st June 1956 to 11th February 1965 (the age of superannuation).	2,935-13
3.	The remuneration for the period of re-employment from 12th March 1965 to 8th August 1965	630-00
	Total ..	6,648-31

D. PONNURANGAM,

Presiding Officer,
Labour Court, Hubli.

28-11-1968.

"True Copy"

D. PONNURANGAM,

Presiding Officer,
Labour Court, Hubli.